U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33967269

Date: DEC. 2, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a Brazilian jiu-jitsu competitor, seeks to classify himself as an individual of extraordinary ability in the athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner described the proposed employment he seeks as "Brazilian Jiu-Jitsu Athlete." As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director determined that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (viii). However, the Director also concluded that the record does not satisfy the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (v), and (vii). On appeal, the Petitioner reasserts that, in addition to satisfying the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (viii), the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (v), and (vii). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(vi), (ix)-(x), thereby waiving these criteria. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director's denial for the reasons discussed below.

> *Documentation of the* [*noncitizen's*] *receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director acknowledged that the record establishes the Petitioner competed in various Brazilian jiu-jitsu tournaments. However, the Director distinguished Adult and Master classifications, observing, "Generally speaking, the top competitors compete in the Adult division, which in turn would mean that the small percentage of competitors who have risen to the very top of the sport as competitors would compete in the Adult division." In contrast, the Director noted that the Master classification "is reserved for those who are over 30 years old," not necessarily those who have risen to the very top of the sport as competitors. Based on that distinction, the Director did not "consider the honors earned by the [P]etitioner in the various Masters Divisions to qualify him under this criterion."

On appeal, the Petitioner reiterates that the record establishes he has won various awards at Brazilian jiu-jitsu tournaments, including awards for first place at two international open championships held in California in 2019. The Petitioner also asserts that the criterion at 8 C.F.R. § 204.5(h)(3)(i) does not preclude age-based classifications within competitions from lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner resubmits evidence summarizing the results of the various tournaments in which he participated.

The Director appears to conflate the criteria of a final merits analysis—whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor—with the criterion at 8 C.F.R. § 204.5(h)(3)(i). *See Kazarian*, 596 F.3d 1115. The plain language, "[d]ocumentation of the [noncitizen's] receipt of lesser nationally or internationally recognizes prizes or awards for excellence in the field of endeavor," does not impose a requirement that the prizes or awards in question must have been earned while competing against "the small percentage of competitors who have risen to the very top of the sport as competitors," as the Director suggests. 8 C.F.R. § 204.5(h)(3)(i). Thus, the issue is not whether the Petitioner earned the awards in question while competing against "the small percentage of competitors who have risen to the very top of the sport as competitors" but, rather, whether the record establishes the prizes or awards are for excellence in the field of endeavor.

We acknowledge that the record contains documentation that the Petitioner received various awards for finishing within the top three places for his particular belt color and weight classification at various Brazilian jiu-jitsu tournaments between 2013 and 2022. However, the tournament results—and the record in general—do not provide sufficient context to establish that the results indicate prizes or awards for excellence in the field of endeavor.[1] For example, neither the tournament results specifically nor the record in general establish the criteria for entry into the tournament and how many participants there were for the belt color and weight classifications in which the Petitioner competed. We note that many results for a given belt color and weight classification among the tournament results indicate two or even just one finalist, indicating that, in many cases, awardees received their prizes or awards for being among the few or only participants, not for excellence in the field of endeavor. Thus, even when the Petitioner placed among the top three finalists, the record does not establish how such a prize or award resulted from excellence, rather than from being among only three participants in a given belt color and weight classification at a given tournament.

Without more probative, relevant evidence, the Petitioner has not established that he received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Therefore, the Petitioner does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *Documentation of the* [*noncitizen's*] *membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

[1] Relevant considerations regarding whether the basis for granting a prize or award was excellence in the field include, but are not limited to: the criteria used to grant the prize or award; the national or international significance of the prize or award in the field; the number of awardees or prize recipients; and limitations on competitors. *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual.

The Director acknowledged that the record establishes the Petitioner holds a first-degree black belt in Brazilian jiu-jitsu. However, the Director noted that the record establishes a first-degree black belt "can be requested after 'a minimum of 3 years of proven activity,'" rather than requiring outstanding achievements. The Director further observed that the record does not establish that "any specific belt level or degree of that belt level that requires any more 'outstanding achievements' to obtain than another . . . belt level or degree of a belt color." Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii). On appeal, the Petitioner reasserts that the requirements for a first-degree black belt in Brazilian jiu-jitsu "reflect a high level of expertise, dedication, and achievement in the sport." He also reasserts that he "was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought" in order to receive his first-degree black belt and, thus, that it satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

The record establishes that the International Brazilian Jiu-Jitsu Federation (IBJJF) awarded the Petitioner a first-degree black belt certificate on December 26, 2018. The record contains an excerpt from the IBJJF's General System of Graduation, which, in relevant part, indicates that the requirements to apply for a black belt certificate, in addition to a minimum age of 16, include the following:

- Must be affiliated to IBJJF at the time of the request.
- The athlete cannot have a provisional graduation (see Article 7).
- Must provide a First Aid or CPR course certificate.
- Must provide an IBJJF Referee Training Program, Rules Seminar or Rules Webinar Certificate of successful completion dated within a 12 (twelve) month period before the date of application.

The General System of Graduation excerpt also states that, generally, membership requests "must be signed/approved by an IBJJF affiliated Black Belt Professor." The document further indicates that a first-degree black belt "can be requested after a minimum period of 3 (three) years of proven activity in the Black Belt under IBJJF," and that such activity can be proven through the following:

- Active membership: Maintaining active membership through the year(s).
- Academy registration under IBJJF: listed as a Head Professor or Additional Professor.
- Approving students: Professors who regularly approve athletes' membership requests under IBJJF through the year(s).
- Black Belt/Degree Certification previously granted by IBJJF.
- Titles won by the athlete in an IBJJF championship.
- IBJJF Referee Training Program Certificate and Rules Course Certificate, both granted by IBJJF.

Neither the General System of Graduation excerpt nor the remainder of the record establish that either a black belt in general, or a first-degree black belt specifically, require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields. As quoted above, the requirements for a black belt include the minimum age of 16, completion of certain medical and rules training programs, and "affiliat[ion] to IBJJF at the time of the request," not

outstanding achievements. In contrast, qualification for a first-degree black belt requires certain activity in a given year, but neither the General System of Graduation excerpt nor the remainder of the record indicates that an individual must satisfy all six—or even more than one—of the criteria to establish activity in a given year. Two of the six criteria (receipt of the black belt, and training program certificates) for a first-degree black belt appear to have been already satisfied upon receipt of the black belt, two other criteria apply only to IBJJF professors, and one of the other two remaining criteria simply contemplates "[m]aintaining active membership," not outstanding achievements.

We acknowledge that one of the six criteria for a first-degree black belt contemplates "[t]itles won by the athlete in an IBJJF championship." However, the General System of Graduation excerpt does not specify a minimum number of titles that must be won or, as discussed above, whether an individual must actually compete against other athletes, rather than receiving a title by default as the only participant in a given belt color and weight classification. Further, the plain language of the General System of Graduation excerpt is that simply maintaining active membership for three years as a black belt satisfies the eligibility criteria for a first-degree black belt, regardless of whether the individual in question has won any titles. Thus, although some first-degree black belts may have accomplished outstanding achievements, the IBJJF does not require outstanding achievements for membership as either a black belt in general or as a first-degree black belt specifically as judged by recognized national or international experts in their disciplines or fields. Therefore, the Petitioner does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the* [*noncitizen*] *in professional or major trade publications or other major media, relating to the* [*noncitizen's*] *work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation*. 8 C.F.R. § 204.5(h)(3)(iii).

The Director acknowledged that the record contains "articles about the [Petitioner] relating to his work, but [the Petitioner] submitted no independent evidence that establishes that they are in major trade publications or other major media." The Director also observed that the record does not establish that the Petitioner "is commonly referred to [by a name other than his legal name] within the BJJ community" and, thus, articles referring to an individual with a name other than the Petitioner's legal name do not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Based on those issues, the Director concluded that the record does not contain published material about the Petitioner in professional or major trade publications or other major media, relating to the Petitioner's work in the field for which classification is sought.

On appeal, the Petitioner generally asserts that "[t]he internet articles submitted . . . adhere to high standards of journalism comparable to traditional print media." The Petitioner also states that he submitted various articles about individuals other than him "to illustrate that the articles about him were published in recognized platforms with significant circulation and credibility in the BJJ and sports communities—as compared to other publications." The Petitioner further asserts that articles in the record that refer to an individual with a name other than the Petitioner's legal name, bearing photographs of the Petitioner, establish that the Brazilian jiu-jitsu community commonly refers to the Petitioner by a name other than his legal name; therefore, those articles about an individual with a name other than the Petitioner's legal name are about the Petitioner.

The record contains copies of various articles about Brazilian jiu-jitsu, published by various entities, hosted at various URLs. We acknowledge that the entities that published the various articles about Brazilian jiu-jitsu appear to be forms of trade publications.[2] However, the criterion at 8 C.F.R. § 204.5(h)(3)(iii) contemplates "major trade publications or other major media," not merely some form of trade publication. The record contains generalized internet traffic data from Similarweb about some of the entities that published various articles about Brazilian jiu-jitsu; however, the internet traffic data does not establish how any of those entities qualify as major trade publications as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii). For example, internet traffic data for "extra.globo.com" appears to indicate that, in April 2023, it had 41.4 million total visits, with average durations of 57 seconds, visiting an average of 1.51 webpages per visit, and that 96.99% of its visitors were from internet protocol addresses based in Brazil. However, the record does not contextualize the statistics, indicate their significance, or demonstrate that "extra.globo.com" qualifies as a major trade publication or other major media, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii). The remainder of the internet traffic data in the record bears similar inconclusive information.

For the reasons addressed above, the record does not contain published material about the Petitioner in professional or major trade publications or other major media, relating to the Petitioner's work in the field for which classification is sought; therefore, the Petitioner does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the* [*noncitizen's*] *original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Director acknowledged that the record establishes the Petitioner "helped organize a BJJ tournament." However, the Director observed that the record does not establish how the Petitioner's help to organize one Brazilian jiu-jitsu tournament constitutes an original contribution of major significance in the field. Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner reasserts that the [redacted] event he coordinated constitutes an original contribution of major significance in the field, and he references the following evidence: "Letters from [redacted][, . . .] articles in the [redacted] Jornal[, . . . and] photographic evidence and promotional materials."

The letters from [redacted] summarize the [redacted] event; however, they do not establish how the event was of major significance in the field. For example, they describe the "well-organized and meaningful event" as "symbolic fights," which "drew participants from various Brazilian states" and raised "1.5 tons of food" donated to a church, which "engendered a collective consciousness of responsibility and philanthropy among participants and attendees." [redacted] elaborates that the food-raising efforts were specifically significant to him and the church that received the donated food, "where I am the Leader of the [redacted] Project," but he does not clarify how the food-donation-raising charity event was of major significance in the field

[2] In evaluating whether a submitted publication is major media, relevant factors include the relative circulation, readership, or viewership. *See generally* 6 USCIS Policy Manual, supra, at F.2(B)(1).

of Brazilian jiu-jitsu more broadly. [redacted] opines that "the event exemplifies the true spirit of Brazilian Jiu-Jitsu—a martial art that transcends the boundaries of the mats to impact society positively," but he does not specify how the event may have been of major significance in the field of Brazilian jiu-jitsu.

In turn, the copy of a one-page article published by [redacted] Jornal in the record reiterates information contained in the above-referenced letters, regarding participants from unspecified states, food collection, and general event activities. Copies of photographs and promotional materials in the record indicate that the event occurred in a small, multipurpose gymnasium.

We acknowledge the merit of the [redacted] tournament's "symbolic fights" and food donations. However, the criterion at 8 C.F.R. § 204.5(h)(3)(v) contemplates "contributions of major significance in the field" of Brazilian jiu-jitsu. Because the record does not establish how the [redacted] tournament was of major significance in the field of Brazilian jiu-jitsu, the Petitioner does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence of the display of the* [*noncitizen's*] *work in the field at artistic exhibitions or showcases*. 8 C.F.R. § 204.5(h)(3)(vii).

The Director acknowledged that the record establishes the Petitioner "participated in athletic competitions as a competitor that were shown to the public." However, the Director observed that the record does not establish that the athletic competitions were "put on display as part of an artistic exhibition or showcase." The Director noted that "it is inherent to the [Brazilian jiu-jitsu athlete] occupation to participate in events that may or may not be publicly viewed" and that "[t]hese events are not artistic exhibitions designed to showcase the participant's work in the same sense that a painter or sculptor displays his work in a gallery or museum." Based on those issues, the Director concluded the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner reiterates that Brazilian jiu-jitsu competitions "can qualify as artistic exhibitions or showcases" because of what he characterizes as an "established understanding of martial arts as a form of self-expressive performance." In support of the alleged "established understanding," the Petitioner generally references on appeal articles written by Dr. Deborah Klens-Bigman and Daniel Berger, which the Petitioner also cited throughout the record. The Petitioner further characterizes a non-precedential 2005 Administrative Appeals Office (AAO) decision as having set a precedent the Director ignored.

The Petitioner's references to Dr. Klens-Bigman and Mr. Berger's articles throughout the record, including on appeal, are unpersuasive. Dr. Klens-Bigman specifically clarified in a publicly available, 2007 essay published on the internet that, in the article the Petitioner quoted throughout the record, Toward a Theory of Martial Arts as Performance Art, "I was not addressing sports or martial art sport forms. That sports have no narrative drive and that it is incorrect to assign one to them is obvious. . . . To the extent performance studies considers sports, they come under the rubric of public entertainments or spectacle." Deborah Klens-Bigman, *Yet More Towards a Theory of Martial Arts as Performing Art*, InYo: Journal of Alternative Perspectives, Electronic Journals of Martial Arts and Sciences (Dec. 2007), https://ejmas.com/jalt/2007jalt/jcsart_klens_0712.html. Rather, Dr. Klens-Bigman explained, her theory applies to certain martial arts forms that are akin to conveying narratives

through symbolic dances. *See id*. Given that Dr. Klens-Bigman has specifically stated that her theory of martial arts as performance art excludes "martial art sport forms," which she characterizes as "public entertainments," the Petitioner's references to Dr. Klens-Bigman's theory of martial arts as performing art in the context of the martial art sport form of Brazilian jiu-jitsu is unpersuasive.

In turn, the excerpts from Mr. Berger's articles, quoted by the Petitioner in response to the Director's RFE and referenced on appeal, address "mixed martial arts," which we acknowledge may include Brazilian jiu-jitsu. However, Merriam-Webster's online dictionary defines "exhibition" as "a public showing (as of works of art, objects of manufacture, or athletic skill)." *Exhibition*, Merriam-Webster, www.merriam-webster.com. While the dictionary definition includes public showings other than those that are artistic in nature, the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(vii) includes the modifier "artistic" and it explicitly requires that the exhibitions or showcases be artistic in nature, thus, not those displaying athletic skill. U.S. Citizenship and Immigration Services (USCIS) only considers non-artistic exhibitions or showcases as part of a properly supported claim of comparable evidence. *See generally* 6 USCIS Policy Manual, supra, at F.2(B)(l). The Petitioner asserts on appeal that "BJJ tournaments . . . satisfy[] the definitions of artistic exhibitions or showcases," not that the criterion at 8 C.F.R. § 204.5(h)(3)(vii) does not apply, and that such tournaments are non-artistic exhibitions or showcases that may establish comparable evidence. *See* 8 C.F.R. § 204.5(h)(4). Because the criterion at 8 C.F.R. § 204.5(h)(3)(vii) specifically excludes non-artistic competitions (such as those displaying athletic skill), and because Brazilian jiu-jitsu tournaments are athletic and competitive, not artistic, in nature, they do not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii). Furthermore, because the Petitioner does not assert that Brazilian jiu-jitsu tournaments may establish evidence comparable to the criterion at 8 C.F.R. § 204.5(h)(3)(vii) rather than qualifying under that criterion outright, we do not consider those non-artistic exhibitions or showcases as comparable evidence as contemplated by 8 C.F.R. § 204.5(h)(4).

Next, the Petitioner mischaracterizes a non-precedential AAO decision from 2005. The Petitioner erroneously states that "USCIS . . . omitted consideration of the precedent set by the AAO decision EAC 03 112 51446 (Dec. 22, 2005)." However, this decision was not published as a precedent and, therefore, does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Setting aside this non-precedential decision's non-binding nature, it also does not bear instructive or persuasive value to the Petitioner's case. The Petitioner asserts on appeal that the petitioner in the 2005 case, "a Music Director/Pianist/Vocal Coach, met the criterion [at 8 C.F.R. § 204.5(h)(3)(vii)] through performances at exclusive showcases designed for audience entertainment." However, we specifically observed in that case, "Not every performance is an artistic exhibition or showcase," as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(vii). We acknowledged in that case that "programs and fliers reveal that the petitioner has performed at exclusive showcases of opera and other music [and] received equal billing with the singers he accompanied," persuading us that the record in that case satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vii) as applied to those facts. Beyond the differing evidence in the two cases' records, the 2005 case addressed an individual who worked as a music director, pianist, and vocal coach, not a Brazilian jiu-jitsu competitor like the Petitioner in the case on appeal. The Petitioner does not establish how a non-precedential case about an individual who worked as a music director, pianist, and vocal coach bears persuasive or instructive value to him, as a Brazilian jiu-jitsu competitor, and whether Brazilian jiu-jitsu competitions may qualify as artistic exhibitions or showcases. Therefore, the non-precedential 2005 case does not inform how the Petitioner satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vii).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.